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9 *The Nutro Company*

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 THE NUTRO COMPANY,
13 Plaintiff,
14 v.
15 ILIO PRODUCTS LLC,
16 Defendants.

Case No. 2:13-cv-08240-GAF-VBK

**STIPULATED PROTECTIVE
ORDER**

DATE: Monday, May 12, 2014
TIME: 1:30 P.M.
COURTROOM: 740

17 WHEREAS, all the Parties to the above-captioned action (the “Action”),
18 namely, Plaintiff The Nutro Company (“Plaintiff” or “Nutra”) and Defendant Ilio
19 Products LLC (collectively, “Defendant” or “Ilio”) jointly request that a protective
20 order be entered pursuant to Rule 26(c) of the Federal Rules of Civil Procedure to
21 protect the confidentiality of nonpublic and competitively sensitive information that
22 they may need to disclose in connection with discovery in this Action;

23 WHEREAS, the Parties, through counsel, agree to the following terms; and

24 WHEREAS, this Court finds good cause exists for issuance of an
25 appropriately tailored protective order;

26 IT IS HEREBY ORDERED that any person subject to this Order —
27 including without limitation the Parties to this action (including their respective
28 corporate parents, successors, and assigns), their representatives, agents, experts
and consultants, all third parties providing discovery or acting as witnesses in this

1 action, and all other interested persons with actual or constructive notice of this
 2 Order — will adhere to the following terms, upon pain of contempt:

3 1. The Party or person producing or disclosing information in the course
 4 of discovery in this action (“Discovery Material”) may designate it as
 5 CONFIDENTIAL material if the party producing the Discovery Material
 6 (“Producing Party”) in good faith deems that a reasonable basis exists for limiting
 7 dissemination of the material under the standards of Federal Rule of Civil
 8 Procedure 26. Discovery Material that may be designated as CONFIDENTIAL
 9 includes, but is not limited to:

- 10 (a) previously non-disclosed business and financial information of a Party
 11 (including without limitation sales reports, sales figures, advertising
 12 figures, financial statements, balance sheets, invoices, price lists,
 13 profitability reports or estimates, contracts, and customer lists);
- 14 (b) previously non-disclosed material relating to ownership or control of
 15 any non-public company;
- 16 (c) previously non-disclosed business plans, product-development
 17 information, or marketing plans;
- 18 (d) any information constituting trade secrets under California Civil Code
 19 § 3426.1;¹ or
- 20 (e) any information of a personal or intimate nature regarding any
 21 individual.

22 2. The Producing Party may designate material as HIGHLY
 23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY if it in good faith deems that a
 24 reasonable basis exists for limiting dissemination of the material under the
 25 standards of Federal Rule of Civil Procedure 26 and the material is of a highly

26
 27 ¹ Cal. Civil Code § 3426.1 provides that trade secret “means information, including a formula, pattern,
 28 compilation, program, device, method, technique, or process, that: (1) Derives independent economic
 value, actual or potential, from not being generally known to the public or to other persons who can
 obtain economic value from its disclosure or use; and (2) Is the subject of efforts that are reasonable
 under the circumstances to maintain its secrecy.”

1 proprietary or technical nature or constitutes competitively sensitive information
2 that could potentially be used by the requesting Party or another Party to this action
3 for commercial use or otherwise to harm the competitive position of the disclosing
4 Party. Materials designated HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
5 ONLY may include material of the type listed as examples in Paragraph 2 above
6 but the designation HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY is
7 not necessarily limited to those examples.

8 3. With respect to Discovery Material that a person has designated as
9 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
10 ONLY” pursuant to this Order, no person subject to this Order may disclose such
11 Discovery Material to anyone else except as this Order expressly permits.
12 Discovery Material designated as CONFIDENTIAL or HIGHLY
13 CONFIDENTIAL – ATTORNEYS’ EYES ONLY shall be referenced hereinafter
14 as “Designated Discovery Material.”

15 4. “CONFIDENTIAL” material or “HIGHLY CONFIDENTIAL—
16 ATTORNEYS’ EYES ONLY” material shall be used by recipients thereof solely
17 for the purposes of this Action, and not for any other purpose whatsoever. No Party
18 shall designate publicly available documents or information as being
19 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES
20 ONLY.”

21 5. Information designated as “CONFIDENTIAL” may be disclosed only
22 to the following persons:

23 a. outside counsel working on this Action on behalf of a Party, and all
24 said counsels’ attorneys, paralegals, assistants, stenographic and clerical employees
25 working under the supervision of such counsel;

26 b. a Party to this case, including in-house attorneys, employees,
27 executives, officers and directors, but only to the extent that such disclosure is
28

1 required in good faith to provide assistance in the conduct of the litigation in which
2 the information was disclosed;

3 c. consultants, investigators, or experts (hereinafter referred to
4 collectively as “experts”) employed or retained by a Party or counsel for the Party
5 to assist or testify in the litigation, provided that the disclosure is necessary to such
6 assistance or testimony, and provided that such persons sign the Non-Disclosure
7 Agreement attached hereto as Exhibit A;

8 d. court stenographers, outside copy services, interpreters and translators
9 whose functions require them to have access to Designated Discovery Material.
10 Prior to disclosure to any such court reporter or person engaged in providing
11 services in connection with this litigation, any such court reporter or person must
12 agree to be bound by the terms of this Order;

13 e. the Court, court personnel, court reporters and the jury, with suitable
14 precaution calculated to maintain confidentiality;

15 f. all authors and prior recipients of the information designated
16 “Confidential.”

17 6. Information designated “HIGHLY CONFIDENTIAL-ATTORNEYS’
18 EYES ONLY” may be disclosed only to persons identified in subparagraphs 5 (a),
19 (c), (d), (e), and (f) of paragraph 5 above; it may not be disclosed to persons
20 identified in paragraph 6(b) unless the Parties agree or the Court orders otherwise.

21 7. The non-party recipient of any “CONFIDENTIAL” or “HIGHLY
22 CONFIDENTIAL-ATTORNEYS’ EYES ONLY” material shall submit to the
23 jurisdiction of this Court for the purpose of any proceedings relating to the
24 performance under, compliance with, or violation of this Order.

25 8. The recipient of any “CONFIDENTIAL” or “HIGHLY
26 CONFIDENTIAL-ATTORNEYS’ EYES ONLY” material that is provided under
27 this Order shall maintain such information in a secure and safe area and shall
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1 exercise due and proper care with respect to the storage, custody, use and/or
2 dissemination of such information.

3 9. Parties shall designate “CONFIDENTIAL” or “HIGHLY
4 CONFIDENTIAL-ATTORNEYS’ EYES ONLY” material as follows:

5 a. In the case of documents, interrogatory answers, responses to requests
6 for admissions, and the information contained therein, designation shall be made by
7 placing either of the following legends on any such document copied or to be
8 copied prior to production: “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-
9 ATTORNEYS’ EYES ONLY (or the shorthand version “ATTORNEYS’ EYES
10 ONLY” may also be used to signify that the material is being designated HIGHLY
11 CONFIDENTIAL-ATTORNEYS’ EYES ONLY). In the event the Producing
12 Party is in possession, custody or control of voluminous documents that may be
13 responsive to requests for production, and chooses to make such documents
14 available for inspection prior to production, no marking need be made by the
15 Producing Party in advance of the inspection. For the purposes of the inspection,
16 documents made available shall be considered as marked “HIGHLY
17 CONFIDENTIAL-ATTORNEYS’ EYES ONLY.” Thereafter, upon selection of
18 specified documents for copying by the inspecting Party, the producing Party shall
19 mark the copies of such documents as either “CONFIDENTIAL” or “HIGHLY
20 CONFIDENTIAL-ATTORNEYS’ EYES ONLY” material if applicable;

21 b. In the case of information produced or provided on a computer disk,
22 data tape, or other medium that has not been reduced to paper form, designation
23 shall be made by informing counsel for the Parties to this Action in writing that
24 such computer disk, data tape or other medium contains “CONFIDENTIAL” or
25 “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY” material. To the
26 extent practicable, such physical medium shall also be appropriately labeled
27 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES
28 ONLY.” If such labeling is not practicable, the Designated Discovery Material

1 shall be segregated or specifically identified as such by the designating party. The
2 Party receiving such “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-
3 ATTORNEYS’ EYES ONLY” material shall then be responsible for appropriately
4 labeling any printed versions of such material that it creates after receiving the
5 information in electronic format;

6 c. The presence of a Party representative at a deposition shall not
7 preclude a Party from later designating the transcript of the deposition as
8 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES
9 ONLY.” In the case of any deposition, designation of the portion of the transcript
10 (including exhibits) that contains “CONFIDENTIAL” or “HIGHLY
11 CONFIDENTIAL-ATTORNEYS’ EYES ONLY” material shall be made by a
12 statement to such effect on the record in the course of the deposition or upon review
13 of such transcript by the attorneys for the Party to whose “CONFIDENTIAL” or
14 “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY” material the deponent
15 has had access. Such review and designation shall occur within thirty (30) days
16 after receipt of the transcript, and on a separate sheet of paper, the numbers of the
17 pages and lines of the transcript containing “CONFIDENTIAL” or “HIGHLY
18 CONFIDENTIAL-ATTORNEYS’ EYES ONLY” material shall be listed. Pending
19 such designation, the entire deposition transcript, including exhibits, shall be
20 deemed “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY”; if no
21 designation is made within thirty (30) days after receipt of the transcript, the
22 transcript shall be considered not to contain any “CONFIDENTIAL” or “HIGHLY
23 CONFIDENTIAL-ATTORNEYS’ EYES ONLY” material, except as specified on
24 the record at the deposition. In the event such a designation is made on the record
25 in the course of a deposition, the portion or portions of the deposition which
26 counsel believe may contain “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-
27 ATTORNEYS’ EYES ONLY” material will be taken with no one present except
28 those persons who are authorized to have access to such information in accordance

1 with this Stipulated Protective Order, and a court reporter, except that a witness,
 2 whose deposition is being taken, may see any document identified as
 3 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES
 4 ONLY” material that indicates, on the face of the document or otherwise, that the
 5 witness has previously seen, has been sent, or has otherwise been made privy to (by
 6 oral or written disclosure of the contents);

7 d. If a Party desires to file materials with the Court or disclose in Court
 8 filings information designated “CONFIDENTIAL” or “HIGHLY
 9 CONFIDENTIAL-ATTORNEYS’ EYES ONLY,” the Party shall take all steps
 10 required by the Court to file the materials under seal; and

11 e. In the case of tangible items, designation shall be made by visibly
 12 marking the item or items as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-
 13 ATTORNEYS’ EYES ONLY” material.

14 10. Acceptance by a Party of any information, document, or thing
 15 designated “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEYS’
 16 EYES ONLY” shall not constitute a concession that the information, document or
 17 thing is as so designated. A Party shall not be obligated to challenge the propriety
 18 of any “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES
 19 ONLY” material designation at the time made, and failure to do so shall not
 20 preclude a subsequent challenge thereto. In the event that any Party to this Action
 21 disagrees at any stage of this Action with such designation, such Party shall provide
 22 to the producing Party ten (10) days prior written notice of its disagreement with
 23 the designation. The Parties shall first try to dispose of such dispute in good faith
 24 on an informal basis. If the dispute cannot be resolved, the Party challenging the
 25 designation of confidentiality may request appropriate relief from the Court
 26 following the specified ten (10) day period. The burden of proving that information
 27 has been properly designated as “CONFIDENTIAL” or “HIGHLY
 28

1 CONFIDENTIAL-ATTORNEYS' EYES ONLY" material is on the Party
2 designating such material.

3 11. In the event that any "CONFIDENTIAL" or "HIGHLY
4 CONFIDENTIAL-ATTORNEYS' EYES ONLY" material is used in any Court
5 proceeding in connection with this Action, it shall not lose its confidential status
6 through such use, and the Parties shall take all steps reasonably required to protect
7 its confidentiality during such use.

8 12. The Clerk of the Court is ordered to maintain under seal all documents
9 and all transcripts of deposition testimony filed with this Court in this Action by
10 any Party which are, in whole or in part, designated as "HIGHLY
11 CONFIDENTIAL-ATTORNEYS' EYES ONLY," including all pleadings,
12 deposition transcripts, exhibits, discovery responses or memoranda purporting to
13 contain or paraphrase such information.

14 13. Any Party filing Designated Discovery Materials with the Court must
15 follow the Court's instructions for filing documents under seal, which are reprinted
16 below for the avoidance of doubt and for the convenience of the Parties:

17 ***L.R. 79-5.1 Filing Under Seal or In Camera- Procedures.*** Except
18 when authorized by statute or federal rule, or the Judicial Conference
19 of the United States, no case or document shall be filed under seal or
20 in camera without prior approval by the Court. Where approval is
21 required, a written application and a proposed order shall be presented
22 to the judge along with the document submitted for filing under seal
23 or in camera. The proposed order shall address the sealing of the
24 application and order itself, if appropriate. The original and judge's
25 copy of the document shall be sealed in separate envelopes with a
26 copy of the title page attached to the front of each envelope.
27 Conformed copies need not be placed in sealed envelopes. Where
28 under-seal or in-camera filings are authorized by statute or rule, the
authority therefor shall appear on the title page of the proposed filing.
Applications and proposed orders to seal or file in camera, along with
the material to be sealed or submitted in camera, shall not be
electronically filed but shall be presented to the Clerk for filing in
paper format, in the manner prescribed by Local Rule 79-5. Unless the

1 filer is exempted from electronic filing pursuant to L.R. 5-4.2(a), a
 2 Notice of Manual Filing shall first be electronically filed identifying
 3 the materials being manually filed. A copy of the Notice of Manual
 4 Filing, together with its NEF (see L.R. 5-3.2.1), shall be presented
 with the documents presented for filing.

5 ***L.R. 79-5.2 Confidential Court Records - Disclosure.*** No sealed or
 6 confidential record of the Court maintained by the Clerk shall be
 7 disclosed except upon written order of the Court.

8 ***L.R. 79-5.3 Procedure for Disclosure of Confidential Court Records.***
 9 An application for disclosure of sealed or confidential court records
 10 shall be made to the Court in writing and filed by the person seeking
 11 disclosure. The application shall set forth with particularity the need
 for specific information in such records. The procedures of L.R. 7-3 et
 seq. shall govern the hearing of any such application.

12 United States District Court for the Central District of California, Local Rule 79-5.
 13 Moreover, any Party filing Designated Discovery Material with the Court must
 14 designate the particular aspects of the filed document that are confidential to enable
 15 the Court, in drafting orders, to determine if there is evidence that the Court should
 16 attempt not to disclose. If the Court unseals a document that was previously
 17 designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL-ATTORNEYS'
 18 EYES ONLY," a Party may request that the document be withdrawn, in order to
 19 avoid the public disclosure thereof.

20 14. This Order shall be without prejudice to the right of any Party to
 21 oppose production of any information. The inadvertent or unintentional production
 22 of documents or information subject to a claim of attorney-client privilege or
 23 attorney work product or a designation of confidentiality shall not be deemed a
 24 waiver, in whole or in part, of the producing Party's claim of privilege, work
 25 product or confidentiality as to the information disclosed. Upon written notice by
 26 counsel for the producing Party of such inadvertent or unintentional production and
 27 of such claim of privilege, work product or confidentiality, counsel for the
 28 receiving Party(s) shall cooperate to restore to the claiming Party all such materials

1 as to which the claim of inadvertent production has been made, provided however if
2 the receiving Party(s) disagrees with the asserted claim of privilege, work product
3 or confidentiality, the production shall nevertheless not be deemed a waiver, but
4 such claim and the status of any such material may be determined by the Court
5 upon application of the receiving Party. In any event, no person or Party shall incur
6 any liability hereunder with respect to a disclosure that occurred prior to receipt of
7 written notice of a designation of attorney-client privilege or attorney work product
8 or of confidentiality.

9 15. This Order shall not be construed: (a) to prevent any Party or its
10 attorneys from making use of information which was lawfully in its possession
11 prior to its disclosure by the producing Party; (b) to apply to information which
12 appears in public records, printed publications or otherwise becomes publicly
13 known; (c) to apply to information which any Party or its attorneys has, after
14 disclosure by the producing Party, lawfully obtained from a third party having the
15 right to disclose such information; or (d) to apply to information which any Party
16 independently develops.

17 16. Nothing in this Order shall preclude any Party to this Action or its
18 attorneys from (a) showing a document designated as "CONFIDENTIAL" or
19 "HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY" to an individual who
20 either prepared or reviewed the document prior to the filing of this Action; or (b)
21 disclosing or using, in any manner or for any purpose, any information or
22 documents from a Party's own files which the Party itself has designated as
23 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL-ATTORNEYS' EYES
24 ONLY."

25 17. If any recipient is subpoenaed in another action or proceeding or
26 served with a document demand, and such subpoena or document seeks
27 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL-ATTORNEYS' EYES
28 ONLY" material produced in this Action, the recipient shall give prompt written

1 notice to counsel for the producing Party prior to the deadline for complying with
 2 the subpoena or responding to the document demand. No compulsory disclosure to
 3 third parties of material exchanged under this Order shall be deemed a waiver of
 4 any claim of confidentiality, except as expressly found by a court or judicial
 5 authority of competent jurisdiction.

6 18. All provisions of this Order restricting the communication or use of
 7 Designated Discovery Material shall continue to be binding after the conclusion of
 8 this Action, unless otherwise agreed in writing by the Parties hereto or ordered by a
 9 court of competent jurisdiction. After the later of the conclusion of the Action or
 10 exhaustion of all appeals, any person in the possession of CONFIDENTIAL or
 11 HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY material shall either
 12 (a) return such documents no later than thirty (30) days after the request of the Party
 13 or non-party who provided such information; or (b) destroy such documents within
 14 such time period and certify in writing within the thirty (30) day period that the
 15 documents have been destroyed. Notwithstanding the foregoing, each Party’s
 16 outside counsel and the Court may retain an archival set of pleadings, motions,
 17 orders, discovery, hearing or trial transcripts, other work product of such outside
 18 counsel, and any exhibits thereto, even if it contains “CONFIDENTIAL” or
 19 “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY” material. The
 20 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES
 21 ONLY” material in outside counsel’s archival copies shall remain subject to all
 22 obligations of this Order.

23 19. Any material produced by a non-party (such as to a subpoena *duces*
 24 *tecum*) may be designated by the non-party as “CONFIDENTIAL” or “HIGHLY
 25 CONFIDENTIAL-ATTORNEYS’ EYES ONLY” as provided for herein. Within
 26 fourteen (14) days after receipt of such materials, any Party to this litigation may in
 27 good faith specifically designate all or a portion of said materials as
 28 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES

ONLY” information . A Party who so designates non-party materials must promptly notify in writing all other parties to this matter, as well as the third party.

20. This Stipulated Protective Order is without prejudice to the right of any Party to seek relief from the Court, upon good cause shown, from any of the provisions contained in paragraphs 1 through 20, inclusive, hereof. In addition, this Order shall not prevent any Party from applying to the Court for further or additional protective orders, or from agreeing among themselves to modify or vacate this Order, subject to the approval of the Court.

21. The Court shall retain jurisdiction of this Action (and over those subject to this Order) after termination of this Action to the extent necessary to enforce the provisions of this Order.

SO STIPULATED AND AGREED.

ARENT FOX LLP

MURCHISON AND CUMMING LLP

By: _____

By: _____

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Counsel for The Nutro Company

Counsel for Ilio Products LLC

1 IT IS SO ORDERED.
2

3 _____
4 /s/
5 VICTOR B. KENTON, UNITED STATES
6 MAGISTRATE JUDGE, U.S. District Court for the
7 Central District of California
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The Nutro Company*

UNITED STATES DISTRICT COURT
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THE NUTRO COMPANY,
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Case No. 2:13-cv-08240-GAF-VBL

NON-DISCLOSURE AGREEMENT

I, _____, acknowledge that I have read and understand the Protective Order in this Action governing the non-disclosure of those portions of Discovery Material that have been designated as **CONFIDENTIAL** or **HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY** (“Designated Discovery Material”), and I will comply with the provisions of this Protective Order. I agree that I will not disclose such Designated Discovery Material to anyone who is not authorized pursuant to the Protective Order to receive the disclosure thereof, and that I will return all Designated Discovery Material to the Party or attorney from whom I received it, or I will destroy such materials in accordance with the terms of this Protective Order. By acknowledging these

1 obligations under the Protective Order, I understand that I am submitting myself to
2 the jurisdiction of the United States District Court for the Central District of
3 California for the purpose of any issue or dispute arising hereunder and that my
4 willful violation of any term of the Protective Order could subject me to
5 punishment for contempt of Court.

6
7
8 Date: _____